



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dennis A. Redding

File: B-223385

Date: January 16, 1987

DIGEST

A former service member's request for waiver of his debt to the United States arising out of overpayments of a basic allowance for quarters and a variable housing allowance is denied where it appeared that he knew or suspected he was being overpaid and failed to take appropriate corrective action. He was therefore at least partially at fault in the matter, and under the provisions of the waiver statute such fault precludes favorable consideration of his application to be relieved of his repayment obligations.

DECISION

This is in response to an appeal of our Claims Group's denial in part of a request for a waiver of indebtedness submitted by a former service member, Mr. Dennis A. Redding. Mr. Redding's debt to the United States arose as the result of overpayments of military pay and allowances he received while serving on active duty with the Air Force. After reviewing the record of this case, we conclude that Mr. Redding was partially at fault in the matter and that consequently the denial of waiver should be sustained.

BACKGROUND

Mr. Redding erroneously received payments in the amount of \$1,518.80 for Basic Allowance for Quarters (BAQ) and \$219.96 for Variable Housing Allowance (VHA) subsequent to his divorce in July 1981, during the period from July 18, 1981, through February 28, 1982. During this period he was eligible to receive these housing allowances only at the "without-dependent" rates since he no longer had a wife or other dependent, but he continued to draw the allowances at the higher "with-dependent" rates. He indicates that he advised his local Housing Management Office of his divorce in July 1981 when it occurred. He also indicates that in December 1981 he made an inquiry at that Office concerning the reason why the allowances had not been reduced, and he received assurances that he was being correctly paid. The error was eventually discovered by Air Force Accounting and Finance officials in March 1982.

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An administrative error related to allotment payments that occurred in March 1982 resulted in an additional debt of \$33.15 in April 1982. Mr. Redding's total debt balance at this point was thus \$1,771.91. At the time of his separation from military service on April 20, 1982, he was due \$390.27 for 19 days' accrued leave. This amount was applied toward his debt, reducing it to \$1,381.64.

The Claims Group granted Mr. Redding a waiver of the overpayment he received in April 1982 amounting to \$33.15, upon a determination that he could not have been expected to be aware of the overpayment when it occurred. The Claims Group, however, denied waiver of the remainder of the debt, concluding that he was at fault in accepting the overpayments of BAQ and VHA since he knew that after his divorce his housing allowance payments should decrease. He questions the correctness of the determination that he was at fault, and asks that he be relieved of his obligation to pay the remaining balance of his debt, amounting to \$1,348.49.

ANALYSIS

The statute governing the waiver of claims of the United States arising out of erroneous payments of military pay and allowances is contained in section 2774, title 10 of the United States Code. That provision authorizes the Comptroller General to waive a claim when "the collection * * * would be against equity and good conscience and not in the best interest of the United States." Subsection 2774(b)(1) further provides, however, that the Comptroller General may not exercise his waiver authority if there is any indication of fault on the part of the service member or any other person having an interest in obtaining a waiver of the claim. We interpret the word "fault," as used in 10 U.S.C. § 2774, as including something more than a proven overt act or omission by the concerned service member. Thus, we consider fault to exist if, in light of all the facts and circumstances, it is determined that the member knew or should have known that an error existed, and should have taken appropriate action to have it corrected even though the error was caused initially by others. The general standard we employ is whether a reasonable person should have been aware of the existence of an overpayment. See 4 C.F.R. Part 91. See also Price v. United States, 621 F.2d 418 (Ct. Cl. 1980); and Petty Officer First Class Bruce F. Jenkins, USN, B-220792, November 14, 1985.

In this case, Mr. Redding acknowledges that he suspected he was receiving overpayments in his BAQ and VHA. He further states the belief that since he brought the error to the attention of the Office of Housing Management and was told that his pay was correct, he feels he should not be liable for any overpayments he received. It is our view, however, that he was at fault in accepting the overpayments because he had reason to know that a change in his marital status would result in a decrease in his housing allowances, and a reasonably prudent person in those circumstances would not have been satisfied by vague assurances from a housing management office concerning the correctness of his pay when the decrease did not occur. Our view is that a reasonably prudent service member would instead have brought the matter to the attention of the local Accounting and Finance Office responsible for maintaining his pay records, and would have insisted that his records be examined to ascertain whether he was being paid the housing allowances at the with- or without-dependent rates. Had Mr. Redding done this, the error would doubtless have been immediately detected and corrected. Hence, we conclude that he is not without fault in the matter and therefore, is ineligible for favorable consideration under the waiver statute.

Accordingly, we deny Mr. Redding's request for waiver of his indebtedness and sustain our Claims Group's determination in the matter.

for Milton J. Arosan
Comptroller General
of the United States